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CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS

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10 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 Teresa Wyatt, Individually and On
Behalf of All Others Similarly
12 Situated,

13 Plaintiff,

14 vs.

15 Cellco Partnership, A Delaware
General Partnership d/b/a Verizon
16 Wireless,

17 Defendant.

CASE NO. 07 CV 2265 JM (CAB)

VERIZON WIRELESS'S REPLY IN
SUPPORT OF ITS MOTION TO
COMPEL ARBITRATION AND
OPPOSITION TO OBJECTION TO
RULING AND REQUEST FOR
RECONSIDERATION BY DISTRICT
COURT OF MAGISTRATE JUDGE'S
RULING

Date: May 2, 2008

Time: 10:00 a.m.

Judge: Hon. Jeffrey Miller

1 In its Opening Brief, defendant Verizon Wireless acknowledged that
2 under current Ninth Circuit law, its motion to compel arbitration must be denied,
3 and explained that the purpose of its motion was to preserve the issue for appeal.
4 Nonetheless, Plaintiff Teresa Wyatt filed an eight-page Opposition and a motion
5 seeking discovery on arbitrability. Wyatt claims that (1) Verizon Wireless did not
6 provide evidence of a written arbitration agreement; and (2) without discovery she
7 cannot fully and fairly oppose Verizon Wireless's motion. Both claims are wrong.

8 First, Verizon Wireless attached two documents to its motion, which,
9 when taken together, provide evidence of a written arbitration agreement. Verizon
10 Wireless attached the receipt that was signed by Wyatt when she purchased her
11 Blackberry 8830, which includes an agreement to abide by the Verizon Wireless
12 Customer Service Agreement. (Mageo Decl. Exh. 1). Wyatt's name is typewritten
13 on the receipt. (*Id.* at 4.) Wyatt's signature is also on the receipt, as seen on the top
14 of page 3 of Exhibit 1. (*Id.*) The reason Wyatt's signature does not appear on the
15 signature line is because she signed this document electronically. When the
16 electronic data is transmitted and turned into a printed copy of the receipt, the
17 signature appears on the top of the page. Indeed, Wyatt specifically recalls
18 electronically signing a receipt, and she does not dispute that the receipt she signed
19 is shown at Exhibit 1. (*See* Wyatt Decl. ¶ 3.)

20 Verizon Wireless also attached the Verizon Wireless Customer Service
21 Agreement that was in effect at the time Wyatt purchased her Blackberry 8830 in
22 May 2007. (Mageo Decl., Exh. 2.) The arbitration agreement appears on page 13
23 of that Customer Service Agreement. The agreement in the receipt to abide by the
24 Customer Service Agreement and the agreement to arbitrate in the Customer
25 Service Agreement evince a signed written agreement to arbitrate.

26 With respect to Wyatt's second claim that she cannot fully and fairly
27 oppose Verizon Wireless's motion without discovery, there is simply no need to
28 engage in any discovery at this time. Verizon Wireless does not dispute that its

1 motion must be denied under current Ninth Circuit law. Nothing more is needed to
2 oppose Verizon Wireless's motion. If the Ninth Circuit sitting *en banc* or the
3 Supreme Court reverses the denial of the motion, the case will be remanded back to
4 this Court and Plaintiff can seek discovery then. But it makes no sense to engage in
5 the time and expense of discovery when it is not, and may never be, necessary.

6 DATED: April 25, 2008

7 MUNGER, TOLLES & OLSON LLP
8 RICHARD E. DROOYAN
SHOSHANA E. BANNETT

9 By: /s/ Richard E. Drooyan

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11 Attorneys for Defendant
12 CELLCO PARTNERSHIP D/B/A
13 VERIZON WIRELESS

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2 **CERTIFICATE OF SERVICE**
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6 I hereby certify that this document(s) filed through the ECF system will be
7 sent electronically to the registered participants as identified on the Notice of
8 Electronic Filing (NEF) and paper copies will be sent to those indicated as non
9 registered participants on April 25, 2008.
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Date: April 25, 2008.

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8 /s/ Richard E. Drooyan
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